

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:) Docket No.98-SIT-1
)
La Paloma Generating Company, LLC)
Petition for Jurisdictional)
Determination)
)

COMMITTEE HEARING

California Energy Commission
1516 Ninth Street
First Floor Hearing Room A
Sacramento, California 95814

Tuesday, July 21, 1998
10:00 a.m. to 11:00 a.m.

Reported By: Janene R. Biggs, CSR No. 11307

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1 P R O C E E D I N G S

2 TUESDAY, JULY 21, 1998

3 SACRAMENTO, CALIFORNIA 10:00 A.M.

4 COMMISSIONER LAURIE: Ladies and gentlemen,
5 I'll call to order the Energy Commission Hearing, and
6 we'll offer some introductions at this point.

7 My name is Robert Laurie, Presiding Member
8 of the Siting Committee. To my left is my associate,
9 David Rohy, Vice Chairman of the Energy Commission, and
10 Associate Member of the Siting Commission. To my right
11 is Susan Gefter, a Hearing Officer, acting under
12 assignment to the Committee on this matter. To
13 Commissioner Rohy's left is Bob Eller,
14 Commissioner Rohy's advisor, and to Ms. Gefter's right
15 is Nehemiah Stone, my advisor.

16 Let me ask staff to introduce yourselves for
17 the record, please.

18 MR. MUNDSTOCK: I'm David Mundstock,
19 attorney to the Energy Commission Staff.

20 MR. HOFFSIS: Jim Hoffsis, Energy Commission
21 Staff.

22 COMMISSIONER LAURIE: Any additional staff
23 that testifies, please put your name on the record
24 before you offer your testimony, please.

25 Mr. Thompson, if you could at this time for
26 the record indicate appearances.

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1 MR. THOMPSON: Thank you very much,
2 Mr. Commissioner.

3 My name is Allan Thompson. I'm the project
4 counsel for the La Paloma project. I have with me
5 Roger Garratt, and Curtis Hatton, both of which I will
6 introduce as witnesses, move the testimony and have a
7 small number of exhibits for them to sponsor when the
8 time is appropriate.

9 COMMISSIONER LAURIE: Thank you,
10 Mr. Thompson.

11 Do you want the members of the public
12 identified for the record?

13 If there are any members of the public who
14 intend to offer comment or testimony or who otherwise
15 wish to have their appearance recognized on therecord,
16 please come forward at this time and give us your name
17 so we have it for record purposes, please.

18 I will at this time offer comment into the
19 record before we initiate Mr. Thompson's presentation.

20 On June 11, 1998, La Paloma Generating
21 Company filed a Petition for Jurisdictional
22 Determination under Public Resources Code section
23 25540.6. The petitioner requests a determination from
24 the Commission that the La Paloma Generating project
25 exempt from the Notice of Intention," or NOI,

is

26 "requirements, of Public Resources Code section 25502.
6

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1 The petition contends that La Paloma's
2 project is the result of the creation of the California
3 Power Exchange which solicits energy bids on an hourly
4 basis. The proposed project will be operated to sell
5 all or some of its input to the California Power
6 Exchange.

7 In accordance with the section 1232 of the
8 Commission's regulations, the Energy Commission sent a
9 notice of this hearing and a copy of the petition to
10 the individuals, organizations, and businesses
11 identified as interested parties in the petition, as
12 well as to other entities who have indicated an
13 interest in this proceeding.

14 In the notice we recommended that all
15 entities intending to participate in this proceeding
16 file written statements explaining their positions by
17 July 15. We also issued a request for clarification on
18 June 29 directing the parties to provide responses to
19 several inquiries regarding La Paloma's assertion that
20 the proposed project is a result of a, quote,
21 "competitive solicitation or negotiation," end quote,
22 relative to California Power Exchange.

23 Both La Paloma and Commission staff filed
24 responses to the Request for Verification.

25 The purpose of today's hearing is to provide
26 a public opportunity to discuss the issues raised in

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1 the petition and to receive evidence from the parties
2 in support of their positions.

3 If there is no objection, the Committee will
4 receive this evidence today.

5 I'd like to provide this opportunity for any
6 person or party to offer any objection as noted.

7 The record will note that there is no such
8 objection.

9 We have asked the parties to mark and
10 identify their documentary submittals for the record
11 before we begin taking testimony.

12 We will proceed in the following sequence:

13 We will ask petitioners for their
14 presentation. That presentation will then be subject
15 to staff cross-exam.

16 Staff will make a presentation subject to
17 petitioner's cross-exam.

18 There will be then opportunity for public
19 input.

20 At this point, I would like to ask my
21 associate, Commissioner Rohy, if you would like to
22 offer any comment at this time?

23 COMMISSIONER ROHY: I have no comment.

24 Thank you.

25 COMMISSIONER LAURIE: Thank you.

26 Officer Gefter, do you have any comment at

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1 this time?

2 HEARING OFFICER GEFTER: Not at this time.

3 COMMISSIONER LAURIE: I would then ask the
4 representatives of La Paloma to identify your exhibits
5 and move them for admission and offer your presentation
6 at this time.

7 MR. THOMPSON: Thank you very much.

8 Mr. Commissioner, we have four exhibits that
9 we would like to have marked for identification today.
10 The first would be the petition, which we filed on
11 June 11th. It is entitled "Petition of La Paloma
12 Generating Company, LLC For Interpretation and
13 Clarification of California Public Resources Code
14 Section 25540.6 Pursuant to 20 CCR 1231."

15 I apologize for only having one copy of this
16 document with me today. I was late on the uptake as to
17 whether -- as to if this should be an exhibit. So if
18 it's okay with the Commissioner -- which you have one,
19 I think -- I will give this one to the court reporter
20 and I can promise to make copies for any members of
21 the public who want them.

22 COMMISSIONER LAURIE: That's acceptable.

23 (Whereupon, Petitioner's Exhibit Number 1
24 was marked for identification.)

25 MR. THOMPSON: I would like next in order

26 I would like to have marked as Exhibit Number 2 the 9

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1 document entitled, "Project Description." This
2 document was included in our submittal of July 10.
3 I'd like to have that marked as Exhibit 2.

4 (Whereupon, Petitioner's Exhibit Number 2
5 was marked for identification.)

6 MR. THOMPSON: Next in order, marked as
7 Exhibit 3 -- and attached to Exhibit 3 will be
8 Exhibit 4 -- which will be the Response to Committee
9 Questions 2 through 5. The document actually has a
10 "Response to Committee Question 1."

11 It is on my letter head, because I believe
12 that that question called for a legal response.
13 Lawyers being averse to testifying to their own
14 material, I would prefer to mark the entire document,
15 less the attached letter from PG&E Energy Trading, as
16 Exhibit 3, and the letter from PG&E Energy Trading to
17 Mr. Roger Garratt as Exhibit 4.

18 (Whereupon, Petitioner's Exhibits Numbers 3
19 and 4 were marked for identification.)

20 COMMISSIONER LAURIE: Any objection to the
21 admission of the exhibits?

22 Exhibits stand admitted.

23 (Whereupon, Petitioner's Exhibits Numbers 1
24 through 4 were received into evidence.)

25 MR. THOMPSON: Thank you very much,
26 Mr. Commissioner.

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1 If it would please the Committee, I would
2 like to next hand out the prepared direct testimony of
3 Mr. Roger Garratt, followed by the prepared testimony
4 of Mr. Curtis A. Hatton.

5 I don't think that this needs to be marked
6 as an exhibit, but it would be more for the guidance
7 for the Committee and the public as to the areas that
8 these two individuals would be testifying to.

9 HEARING OFFICER GEFTER: Mr. Thompson, why
10 don't we go ahead and mark these as Exhibits 5 and 6,
11 because if you're going to have them testify to this,
12 then it makes it easier on the record.

13 MR. THOMPSON: If I could ask that the prepared
14 direct testimony of Roger Garratt be marked as
15 Exhibit 5, and the prepared direct testimony of
16 Curtis Hatton be marked as Exhibit 6.

17 COMMISSIONER LAURIE: Any objection to the
18 admissions.

19 MR. MUNDSTOCK: No objection.

20 (Whereupon, Petitioner's Exhibits Numbers 5
21 and 6 were marked for identification and
22 received into evidence.)

23 MR. THOMPSON: The first witness I would
24 like to call is Mr. Roger Garratt.

25

26 ///

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1 ROGER GARRATT,
2 a witness in the above-entitled action, who being
3 first duly sworn by the court reporter, was thereupon
4 examined and testified as follows:

5 DIRECT EXAMINATION BY MR. THOMPSON

6 THE WITNESS: I do.

7 Q BY MR. THOMPSON: Mr. Garratt, are you the
8 same Roger Garratt that is -- is responsible for the
9 "Prepared Direct Testimony of Roger Garratt," Exhibit
10 5 in this proceeding?

11 A Yes, I am.

12 Q And if you were asked these questions today
13 under oath would your responses would be the same?

14 A Yes.

15 Q And is it true you are responsible for the
16 project description, which is Exhibit 2, and the
17 responses to Committee Questions 2 and 4, which is
18 Exhibit 3?

19 A Yes.

20 Q And Exhibit 4, which is the letter from PG&E
21 Energy Trade?

22 A Yes.

23 MR. THOMPSON: I have three other questions that
24 I would like to ask Mr. Garratt to respond to that
25 are not included in the prepared remarks, if that is
26 acceptable.

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1 CHAIRMAN LAURIE: Yes.

2 Q BY MR. THOMPSON: Mr. Garratt, would you
3 describe in a little greater detail than what is
4 contained in the prepared material the location of the
5 La Paloma project?

6 A The proposed project site is located in western
7 Kern County, approximately 35 miles west of the
8 city of Bakersfield in the oil production portion of
9 the county. As noted in the testimony, the site itself
10 is two miles east of -- southeast of the unincor-
11 porated town of McKittrick on a parcel of land that
12 has abandoned oil wells.

13 Q Thank you.

14 Next, would you describe the experience
15 and -- development experience primarily of U.S.
16 Generating Company?

17 A U.S. Generating Company has a long track
18 record of successful project development. We have
19 approximately 18 projects that have been developed for
20 over the past ten years or so representing
21 approximately 3500 megawatts in commercial operation.
22 In addition to the La Paloma Generating Project that
23 is in active state of development, we have four ad-
24 ditional combined cycle projects on the East Coast
25 that are in active development at this time.

26 Q And finally, Mr. Garratt, would you describe

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1 the relationship between U.S. Generating -- the
2 project -- La Paloma project, U.S. Generating and PG&E
3 Corp.? And while you're at it, throw in the PG&E that
4 we're most familiar with.

5 A Okay. The La Paloma Generating Company,
6 LLC, is a wholly owned subsidiary of U.S. Gen.
7 U.S. Gen -- U.S. Generating Company, or U.S. Gen for
8 short, is one of five business units underneath the
9 PG&E Corporation. The Pacific Gas & Electric Company,
10 the utility, is one of those business units, the
11 regulated utility. The other four business units are
12 unregulated business units, and in addition to U.S.
Gen
13 is PG&E Energy Trading, PG&E Energy Services, and then
14 PG&E Gas Transmission.

15 So the La Paloma project is part of the
16 U.S. Gen business program, and it's part of the
17 unregulated business of PG&E corporation. It's not
18 looking to the utility for any rate payer support, or
19 any rate pay or assistance, any utility assistance
20 whatsoever in terms of the development or subsequent
21 operation of the project.

22 Q Thank you.

23 Finally, and the PG&E Energy Trading Company
24 that you refer to is the same entity that filed the
25 letter -- that we have a letter from, which is

26 Exhibit 4; is that correct?

14

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1 A Yes.

2 MR. THOMPSON: If it would please the Commission,
3 what I would like to do is put on Mr. Curtis
4 Hatton, and then put on the two witnesses as
5 a panel for cross-examination, as their testimony is
6 somewhat intertwined. It dovetails. It may make sense
7 to do that, but I obviously will concede to whatever
8 the Committee wants to do.

9 HEARING OFFICER GEFTER: The Committee may
10 have some questions right now of the witness.

11 MR. THOMPSON: Okay.

12 COMMISSIONER LAURIE: We will reserve the
13 right to cross-examine the panel when the panel makes
14 itself.

15 Ms. Gefter, do you have any questions of the
16 witness?

17 HEARING OFFICER GEFTER: I do have a
18 question regarding the letter, Exhibit 4.

19 QUESTIONS BY THE COMMITTEE

20 HEARING OFFICER GEFTER: What is the relationship
21 between PG&E Energy Trading and La Paloma,
22 and how is the letter related to this proceeding?

23 THE WITNESS: PG&E Energy Trading is one of the
24 other unregulated business units of the PG&E
25 Corporation. So in that sense, PG&E Energy Trading and
26 La Paloma would be affiliated companies within the big

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1 family of the PG&E Corporation.

2 In terms of its relevance to these proceedings,
3 this letter was solicited from Energy Trading
4 as an example of the kinds of arrangements that
5 could be made for the energy output of the La Paloma
6 Generating Project.

they 7 HEARING OFFICER GEFTER: In the letter,
8 talk about the Western Power Exchange. Is the letter
9 referring there to the California codes?

10 THE WITNESS: Yes.

11 HEARING OFFICER GEFTER: It's still not
be 12 clear what the Trading Company is and why they would
13 sending a letter regarding La Paloma's viability
14 settlement in electricity.

15 Could you perhaps explain that a bit
16 further?

17 THE WITNESS: Well, the Energy Trading
18 Company within the PG&E Corp. is the entity that is
19 involved in the daily markets -- daily electricity
20 markets on a wholesale basis, buying and selling,
21 whether it's on a daily basis or, you know, monthly
22 basis. Any sort of forward market. And one of the
23 ways that we envision going forward in terms of
24 developing projects like La Paloma, is that the assets
25 themselves obviously would generate the electricity,

26 but then we would go through the Energy Trading as the
16

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1 business unit that would trade the energy, sell the
2 unit--sell the energy into the market, rather than re-
3 plicating all of those kinds of functions within each
4 generating plant.

5 HEARING OFFICER GEFTER: That leads me to
6 the next question, regarding registration of the
7 California Power Exchange, PX registration. With that,
8 what is La Paloma's intent with regard to registering
9 with the PX, or would that registration be handled by
10 PG&E Trading Energy?

11 THE WITNESS: A definitive decision on
12 La Paloma registering has not been made at this point.
13 At this point, Energy Trading and then Energy Services
14 are both registered participants, and I think until
15 the La Paloma project is closer to commercial
16 operation I don't envision us making a decision about
17 La Paloma being a participant.

18 HEARING OFFICER GEFTER: I just want to
19 understand, the Energy Trading Company is now a
20 registered member of PX?

21 THE WITNESS: Yes.

22 HEARING OFFICER GEFTER: It is now actively
23 trading on the PX.

24 THE WITNESS: I'm not certain how active
25 they are in their trading. I believe that Energy
26 Services is a more active participant now.

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1 COMMISSIONER LAURIE: Staff, do you wish --

2 HEARING OFFICER GEFTER: There's one more.

3 COMMISSIONER LAURIE: Mr. Stone?

4 MR. STONE: You said that the arrangement
5 with the PG&E Energy Trading is an example of how the
6 sales for how La Paloma's power would be sold. Would
7 there be other mechanisms, or would all of the sales
8 be handled by PG&E Trading?

9 THE WITNESS: Well, that decision has not
10 been made at this point. Potentially, we may go
11 through other energy companies to sell the outlet into
12 the power exchange or to other -- or potentially even
13 sell directly to large, wholesale customers outside of
14 the Exchange.

15 MR. STONE: Do you see any sale mechanisms
16 that could put the rate payers at risk from any of the
17 power from La Paloma?

18 THE WITNESS: No.

19 COMMISSIONER LAURIE: Staff, do you wish to
20 cross-examination Mr. Garratt?

21 MR. MUNDSTOCK: We have no questions.

22 COMMISSIONER LAURIE: Thank you,
23 Mr. Garratt.

24 Mr. Thompson?

25 MR. THOMPSON: Thank you, Mr. Commissioner.
26 I would next like to introduce and

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1 distribute, which is Exhibit Number 6, which is the
2 prepared testimony of Curtis Hatton.

3 COMMISSIONER LAURIE: You don't have
4 Mr. Hatton sworn in at this time?

5 MR. THOMPSON: He's not yet sworn in.

6 CURTIS HATTON, a witness
7 in the above-entitled action, who being first
8 duly sworn by the court reporter, was thereupon
9 examined and testified as follows:

10 DIRECT EXAMINATION BY MR. THOMPSON

11 THE WITNESS: Yes, I do.

12 Q BY MR. THOMPSON: Mr. Hatton, are you the
13 same Curtis A. Hatton that is identified in Exhibit 6
14 to this proceeding?

15 A Yes, I am.

16 Q And if I were to ask you the questions
17 contained in Exhibit 6, would you today under oath
18 respond the same way that Exhibit 6 shows?

19 A Yes.

20 Q Thank you very much.

21 Am I correct that you are responsible for
22 Questions 3 and 5 in Exhibit 3?

23 A Yes.

24 MR. THOMPSON: Mr. Hatton is tendered for
25 cross-examination. Whatever the Committee wishes,
26 whether it would like to put the panel--well, I guess

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1 you can ask questions of either one. If they cross
2 over, I would like to let the witnesses know that they
3 can refer to the other witness if a more full answer
4 can be delivered that way.

5 COMMISSIONER LAURIE: Thank you,
6 Mr. Thompson.

7 QUESTIONS BY THE COMMITTEE

8 COMMISSIONER LAURIE: Commissioner Rohy, do you
9 have any questions of either one of the witnesses at
10 this time?

11 COMMISSIONER ROHY: A couple of minor ones.

12 First, in perusing the PG&E Trading Company
13 letter, I did not read a commitment in the letter. Is
14 there a purpose -- What is the purpose of the letter?

15 MR. GARRATT: The primary purpose of the
16 letter was to demonstrate that the Trading Company was
17 one means of selling the output of the La Paloma
18 Generating project.

19 COMMISSIONER ROHY: My second question is on
20 Question Number 5 -- I believe the answer to Question
21 Number 5, and when I read the question, it appears as
22 though the intent of the proposed power plant is to
23 sell power to the PX, however, if the applicant would
24 be willing to sell some ancillary services, if
25 requested.

26 Is that a proper interpretation of Answer

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1 Number 5?

2 MR. HATTON: La Paloma, I believe, is
3 proposed as a base-load producer. As such, it could
4 sell its energy output to the Power Exchange, or as
5 Roger has mentioned, to any other potential customer
6 via a wholesale market.

7 COMMISSIONER ROHY: Thank you.

8 COMMISSIONER LAURIE: Ms. Gefter.

9 HEARING OFFICER GEFTER: From the prepared
10 testimony that is filed, Exhibit 6, you indicate that
11 you are responsible for market analyses regarding the
12 ISO and PX policies.

13 How is this related to La Paloma?

14 MR. HATTON: La Paloma, being situated within
15 California, will be operating under the marketplace
16 which consists of both the PX and system operator.
17 As such, I helped provide the project some expertise
18 as how this new deregulated market will operate and
19 how La Paloma might interconnect with both the
20 Independent System Operator and the Power Exchange.

21 HEARING OFFICER GEFTER: In the Answers to
22 Request for Clarification, one of the main concerns we
23 had is how is the La Paloma project the result of
24 competitive solicitation, and in your understanding of
25 how the PX works, how is that--how is the idea of the
26 project -- the idea of La Paloma, or even the

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1 development of La Paloma, related to competitive
2 solicitation from the PX?

3 MR. GARRATT: The way that we envision the La
4 Paloma Generating Project is really as a base-load
5 energy project, and what we're looking for for the
6 La Paloma project, and what we really look for in
7 terms of any project that we're proposing is,
8 essentially price discovery and market liquidity, and
9 so to ask the PX represents that in California, which
10 I think is akin to a competitive solicitation. You
11 know, it's essentially a series of solicitations.

12 HEARING OFFICER GEFTER: And it's proposed as
13 1,000 megawatt plant. Is the information you have con-
14 ductive to that which you see on the market? What are
15 the indications that this will be a viable project?

16 MR. GARRETT: In terms of the market
17 analysis, market forecasting work that we're doing,
18 this is a--it's an ongoing process obviously, and so
19 based on the work that we've done to date, our
20 analysis shows this is being a viable project.
21 Obviously we will continue to analyze the market.

22 MR. HATTON: I guess I would like to add
23 that the Power Exchange today operates with tens of
24 thousands of megawatts on an hourly basis day after
25 day, and La Paloma would be able to participate within
26 that market.

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1 HEARING OFFICER GEFTER: I wanted to go back
2 to the question regarding the experience of
3 U.S. Generating Company, and Mr. Garratt had indicated
4 that the U.S. Gen had developed over 18 projects
5 within the last ten years.

6 Is that an accurate description of your
7 testimony?

8 MR. GARRATT: (Witness nods head.)

9 HEARING OFFICER GEFTER: Were those projects
10 in California?

11 MR. GARRATT: No. None of those projects
12 were in California. A couple of those projects are in
13 the WFCC. Most of the projects are along the
14 East Coast.

15 HEARING OFFICER GEFTER: Has U.S. Gen
16 developed any projects in California?

17 MR. GARRATT: We've looked at development
18 projects within California in the past. As you may be
19 aware, we had looked at other projects within
20 Kern County as part of the BRPU process and actually
21 brought those projects along to a fair state of
22 development as part of that process.

23 So, yes, we do have experience within
24 California, and we do have specific experience within
25 the same geographical area we're looking at.

26 HEARING OFFICER GEFTER: Are all of the 18

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1 projects actually built and operated, or were these
2 just development projects?

3 MR. GARRATT: I'm not sure if all of them
4 are operating today, but all of the 18 projects were
5 developed, constructed, and brought to commercial
6 operations. There may be -- There may be one or two
7 that has been shut down for specific business reasons.

8 HEARING OFFICER GEFTER: And these were--were
9 they all generally combined cycle projects similar
10 to the proposed plan here in La Paloma?

11 MR. GARRATT: Actually, they're a variety of
12 technology. There have been some combined cycle
13 projects that were part of the 18, but there's a
14 variety of projects that we have developed.

15 MR. ELLER: Of the 18 projects, are any of
16 them in the size category of the La Paloma facility?
17 What's the largest of the 18?

18 MR. GARRATT: I'm not -- I'm not sure of the
19 answer to that question. I know up in Oregon we have a
20 combined cycle project that is in the neighborhood of
21 450 megawatt. I don't know if that was the largest of
22 the 18 projects or not.

23 COMMISSIONER LAURIE: Mr. Stone?

24 MR. STONE: Yes.

25 You mentioned that the project would be
26 available for bidding on ancillary services. Do you

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1 know if there are any RMR contracts in that area, and
2 if the project would be considered to -- if you would
3 consider to go after an RMR contract with the ISO?

4 MR. HATTON: To my knowledge, there are not PMR
5 facilities in the immediate area of where La Paloma
6 is -- will be built. I don't think that La Paloma has
7 considered an RMR contract. They've more looked at
8 being a base-load energy provider.

9 COMMISSIONER LAURIE: Let me delve into
10 momentarily, perhaps again, the relationship between
11 La Paloma and the rate payer.

12 Who owns La Paloma?

13 MR. GARRATT: U.S. Generating Company.

14 COMMISSIONER LAURIE: Singularly?

15 MR. GARRATT: Um-hmm.

16 COMMISSIONER LAURIE: And who owns U.S. Gen?

17 MR. GARRATT: The PG&E Corporation.

18 COMMISSIONER LAURIE: Again singularly, as
19 far as you know?

20 THE WITNESS: Yes.

21 COMMISSIONER LAURIE: If any of this is
22 outside of your realm of knowledge, please feel free
23 to say so.

24 To what extent or in what matter could any
25 U.S. Gen losses be reflected in the earnings of PG&E?

26 MR. GARRATT: Well, in terms of the PG&E

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1 Corporation, they would be rolled up to the corpora-
2 tion and so those would be losses that the share-
3 holders of--essentially that the shareholders of the
4 PG&E Corporation would take.

5 COMMISSIONER LAURIE: And, again, to the
6 extent that you have knowledge, could any of these
7 losses be reflected in California's electricity rate
8 structure?

9 MR. GARRATT: Not to -- Not to the best of
10 my understanding.

11 COMMISSIONER LAURIE: Thank you. I have no
12 more questions.

13 Staff, do you have any cross-examination of
14 either one of these witnesses?

15 MR. MUNDSTOCK: We have no
16 cross-examination.

17 COMMISSIONER LAURIE: Thank you.

18 Anything else, Mr. Thompson?

19 MR. THOMPSON: I'd like to ask one question
20 as a followup.

21 REDIRECT EXAMINATION BY MR. THOMPSON

22 Q BY MR. THOMPSON: Mr. Garratt, is the project
23 a result of the creation of the Power Exchange.

24 A I would say essentially, yes, in that Power
25 Exchange created the opportunity to -- for a liquid
26 wholesale power market that we have looked at very

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1 closely, analyzed, and believed that this project can
2 successfully compete within that market.

3 MR. THOMPSON: Thank you.

4 COMMISSIONER LAURIE: I have a question of
5 you, Mr. Thompson.

6 Sir, in your petition, you make reference to
7 previous actions of this Commission in granting
8 exemptions to other projects.

9 Do you recall that in your petition?

10 MR. THOMPSON: Yes, sir.

11 COMMISSIONER LAURIE: Hasn't it been your previously
12 stated position that you have advised -- you
13 have requested this Commission to address exemption
14 issues on a case-by-case basis?

15 MR. THOMPSON: Yes.

16 COMMISSIONER LAURIE: Then please explain
17 the relationship between your argument that on the one
18 hand we should address these issues on a case-by-case
19 basis, and on the other hand we should grant an
20 exemption in light of -- or perhaps in partial light
21 of our previous decision.

22 MR. THOMPSON: Let me answer that with two
23 points.

24 Number one, I think that we are just now seeing
25 projects that are coming to this Commission that
26 are going to be developed primarily based upon the

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1 economics of the Power Exchange. Heretofore, projects
2 were developed in large part either to sell to utility
3 or affiliated customers or to sell through power
4 marketers. I think the PX has changed all that.

5 The second point is that when faced with
6 your question, I agonized over whether or not --
7 actually over the term "irrebuttable presumption," and
8 in a fit of caution I backed away from endorsing the
9 idea that irrebuttable presumption does exist with
10 projected sales into the Power Exchange from a project
11 that was developed because of the existence of the
12 Power Exchange.

13 I didn't mean to foreclose that entirely.
14 It was just that sitting there in front of my -- I was
15 going to say typewriter -- in front of my computer, I
16 was not able to imagine enough sets of circumstances
17 to say with any conviction that a blanket exemption
18 should exist.

19 So it was only my caution, sir.

20 HEARING OFFICER GEFTER: Along those lines,
21 when we look for evidence of a negotiation or
22 solicitation, we've looked at letters for potential
23 marketers or we have other more concrete kind of
24 evidence and the assertion that the existence of the
25 Power Exchange then causes the development of the
26 La Paloma, or La Paloma in the commerce is the result

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1 of the existence of Power Exchange, and, you know,
2 occasionally looking for more concrete evidence, it
3 occurred to us that being a registered member of the
4 PX might be more conducive to support a finding that
5 the project is a result of the existence of a PX, and
6 this is, again, a question for Mr. Thompson and also
7 for staff.

8 Should, in these cases, the petition for
9 exemption be required to provide evidence of
10 registration with the PX.

11 MR. THOMPSON: I don't think so. The reason
12 is is that while I'm not familiar enough with the
13 workings of the PX to know whether or not any entity
14 that has megawatt hours to sell can join in. My
15 suspicion is is that would be the case, that any
16 entity that wants to sell in the PX can find a
17 pathway, either through registration on behalf of the
18 project or registration on behalf of the utility or
19 some such mechanism. So I would hate to see a
20 requirement like that, because I suspect it may be
21 really easy to fulfill.

22 I also feel that the development of merchant plants
23 and specifically merchant plants that are being
24 developed to participate in the liquid PX market, that
25 a showing of a letter such as we did could be required
26 in an instance like ours where the entity that

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1 is developing the plant is not yet a member registered
2 with the Power Exchange and is introduced to show that
3 a pathway does exist for the sale after the power.

4 Maybe I'm talking around myself here, but
5 the purpose that we submitted the letter was to show
6 that that pathway exists. Making it a requirement, I'm
7 not so sure it should be a requirement.

8 Was I at all clear in answering your
9 question?

10 MR. STONE: I have a follow-up question or
11 two.

12 You stated, basically in the negative, that you
13 could not imagine all cases that you didn't want to
14 claim as irrebuttable presumptions, that just because
15 the Power Exchange existed and a project is being
16 developed, because of that, that it shouldn't get the
17 exemption.

18 Can you in the positive imagine any cases where
19 even if a project can loosely be termed to be the
20 result of the existence of the market, that it still
21 should not get the exemption? Can you imagine any
22 specific cases where that would be the case?

23 MR. THOMPSON: Mr. Stone, I'll tell you the
24 one I agonized, at least a little while with, and that
25 would be, supposing that this Commission received an
26 application for a 5,000 megawatt project -- 10,000

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1 megawatts - pick a fairly large number that would have
2 a fairly dramatic impact on the market.

3 On the one hand, the free market Allan
4 Thompson says, "Well, the more megawatts out there,
5 the lower the price is going to be." The more cautious
6 Allan Thompson says, "Boy, what impact on the market
7 could that have? Would there be any cost implications
8 for the 10,000 megawatt project out there.
9 Are there other reasons why from a public policy
10 standpoint the Commission may want to take a look at
11 something like that?"

12 And those were issues that I could -- that I
13 had trouble formulating, much less addressing. That
14 was an example of a form that I struggled with.

15 MR. STONE: Did you have other examples,
16 other specific cases?

17 MR. THOMPSON: Nothing really comes to mind.

18 COMMISSIONER LAURIE: Anything else,
19 Ms. Gefter?

20 HEARING OFFICER GEFTER: Not right now.

21 COMMISSIONER LAURIE: Commissioner Rohy?

22 COMMISSIONER ROHY: This is retreating back
23 into the project description, and there was a question
24 asked previously about 1,000 megawatt plants, but when
25 I read the project description, there are four islands
26 that are described.

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1 Are those islands -- Tell me about the
2 islands. Are they identical? Are they replicating the
3 same technology in each case?

4 MR. GARRATT: Yes. Essentially it's for 250 mega-
5 watt combined cycle configuration, so it's really a
6 four-unit plant, and in that sense the project up in
7 Hermiston, Oregon is fairly similar, and it's a
8 two-unit plant.

9 We also have a project up in Rhode Island.
10 That's a two-unit plant, 500 megawatt.

11 So that's right. It's really four identical
12 units.

13 COMMISSIONER ROHY: Thank you.

14 HEARING OFFICER GEFTER: Is the intent with
15 the four units to develop them sequentially or at the
16 same time?

17 MR. GARRATT: At the same time.

18 MR. THOMPSON: If I may?

19 Q Mr. Garratt, is it possible that one or more
20 of the trains may have different pollution control
21 equipment?

22 A Yes.

23 COMMISSIONER ROHY: You opened the
24 opportunity for more questions, Mr. Thompson.

25 Will all four be ALER.

26 MR. GARRATT: Yes, to the best of my

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1 knowledge. I'm not the expert on air emissions.

2 COMMISSIONER ROHY: I believe that gets more into
3 issues that that are not NOI related, so I don't think
4 I'll pursue that further, but you opened the box.

5 MR. THOMPSON: The reason I ripped the top off
6 that box was applicant has said in our application
7 that we are looking at SCONOX, which is a technology
8 that's been under some considerable discussion and, to
9 my knowledge, this is the first applicant that said
10 "We may," and I wanted to make it clear that when you
11 talked about four identical trains, we may have some
12 different equipment on one or more of the trains.

13 COMMISSIONER ROHY: Thank you for that
14 explanation.

15 COMMISSIONER LAURIE: Anything else,
16 Mr. Thompson?

17 MR. THOMPSON: No, sir.

18 COMMISSIONER LAURIE: Staff, do you have a
19 presentation?

20 MR. MUNDSTOCK: Yes.

21 We would like to introduce into evidence is
22 our exhibit, which I guess now is 7, the Energy
23 Commission staff statement filed on July 15, 1998. It
24 includes the La Paloma analysis by Jim Hoffsis, and
25 we've added a Witness Qualification for James Hoffsis
26 as a package.

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1 (Whereupon, Staff's Exhibit Number 7 was
2 marked for identification.)

3 COMMISSIONER LAURIE: Thank you,
4 Mr. Mundstock.

5 Anything else?

6 MR. MUNDSTOCK: We would offer Mr. Hoffsis
7 to summarize his testimony.

8 COMMISSIONER LAURIE: Any objections to the
9 admission of that exhibit, Mr. Thompson?

10 MR. THOMPSON: None.

11 COMMISSIONER LAURIE: Let the record reflect
12 that Exhibit 6 is duly admitted.

13 HEARING OFFICER GEFTER: Exhibit 7.

14 COMMISSIONER LAURIE: Excuse me?

15 HEARING OFFICER GEFTER: Exhibit 7.

16 COMMISSIONER LAURIE: That is correct.

17 Thank you.

18 (Whereupon, Staff's Exhibit Number 7 was
19 received into evidence.)

20 COMMISSIONER LAURIE: Mr. Thompson, do you
21 have any questions of the staff, of Mr. Mundstock at
22 this time?

23 MR. THOMPSON: We do not.

24 COMMISSIONER LAURIE: We were going to have
25 Mr. Hoffsis submit his testimony.

26 COMMISSIONER LAURIE: I'm sorry. Thank you.

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1 DIRECT EXAMINATION BY MR. MUNDSTOCK

2 Q BY MR. MUNDSTOCK: Mr. Hoffsis, would you
3 please summarize both your qualifications and your
4 testimony?

5 A Yes.

6 I have not been sworn. Should I be?

7 JAMES HOFFSIS, a witness
8 in the above-entitled action, who being first
9 duly sworn by the court reporter, was thereupon
10 examined and testified as follows:

11 THE WITNESS: As has already been mentioned here
12 today, the statute states that the proposed powerplant
13 can be exempted from the underlying process because
14 it's gas-fired and is a result of a competitive
15 solicitation or negotiation. As we have also heard,
16 the applicant asserts that its project qualifies for
17 this exemption by virtue of its stated intentions to
18 sell power and to the newly formed Power Exchange.

19 I was asked to address the question of
20 whether or not the PX constitutes a competitive
21 solicitation. My testimony, very briefly, describes
22 the operation of the PX and concludes that the PX does
23 indeed fit the definition of a competitive
24 solicitation, and further observes that I believe the
25 Commission has already reached essentially this
26 conclusion in an addendum to the 1994 Electricity

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1 Report.

2 That concludes my summary.

3 QUESTIONS BY THE COMMITTEE

4 COMMISSIONER LAURIE: Ms. Gefter?

5 HEARING OFFICER GEFTER: I don't have any
6 further questions.

7 COMMISSIONER LAURIE: Commissioner Rohy?

8 COMMISSIONER ROHY: I have no questions.

9 COMMISSIONER LAURIE: Mr. Thompson?

10 MR. THOMPSON: No questions, but we want to
11 thank the staff for its time and thorough analysis --
12 timely and thorough analysis.

13 COMMISSIONER LAURIE: Mr. Hoffsis, could you
14 explain to me your perspective on the question of the
15 relationship between the PX and the competitive
16 solicitation, getting to the point of, are not all
17 merchant plants subject to competitive solicitation?

18 THE WITNESS: Whether or not all
19 merchants -- all merchant plants are subject to
20 competitive solicitation. I should back up one step
21 and be very clear, that strictly speaking, my testimony
22 is only to whether or not the PX constitutes a
23 competitive solicitation. It does not go to the next
24 step of whether or not this project is, as it asserts,
25 the results of a competitive solicitation. Your ques-
26 tion goes a little beyond that as to whether or not

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1 all merchant plants --

2 COMMISSIONER LAURIE: Do you have an opinion
3 on that question?

4 THE WITNESS: I think my opinion would be,
5 if indeed you find in this case that an assertion that
6 a proposed plan will sell under the Power Exchange,
7 and that is the reason for that plant's being proposed
8 and that further that you find that the Power Exchange
9 meets the definition of a speculative solicitation,
10 then I don't think I see any reason why all merchant
11 power plants can make those same claims and in the
12 same fashion be worthy of exemptions.

13 COMMISSIONER LAURIE: You've indicated that you
14 you cannot offer testimony whether in your opinion
15 project is the result of a competitive solicitation.
16 Do you have -- and can you help educate me as to what
17 that term means? Is the result of rather than the
18 term is subject to?

19 THE WITNESS: The statute was -- it came about
20 in a slightly different era with a slightly different
21 specific solicitation in mind. Nevertheless,
22 I don't think there was any difficulty. I have no
23 difficulty in applying the statute with the current
24 situation.

25 As a -- again, my testimony doesn't
26 specifically go to this, but since you asked -- my own

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1 view is that as a very practical and pragmatic matter,
2 when someone in this new competitive deregulated
3 environment asserts that they would not be proposing
4 this project were it not for the existence of the
5 Power Exchange that they wish to sell into, I have no
6 basis on which to dispute that claim.

7 Which leaves one pretty much with the
8 alternative of accepting the claim, and I personally
9 don't have any difficulty in accepting the claim.

10 You've already probed the issue a little bit
11 about a paper jeopardy, or shareholder responsibility,
12 and I think received evidence that rate payers are not
13 at risk for this plant.

14 And given that if someone says that they are
15 building this plant as the result of the PX being a
16 competitive solicitation, fine. It's their problem.
17 If it turns out to be a bad in retrospect, an error in
18 judgment, their shareholders are at risk.

19 COMMISSIONER LAURIE: Thank you, sir.

20 Any other questions?

21 Mr. Stone?

22 MR. STONE: That brought up a couple other
23 questions for me.

24 Does it matter whether 100 percent of the
25 sales or the output of the plant is intended for the
26 PX, or whether some smaller percentage is intended for

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1 the PX and the bulk of the sales would be handled some
2 other way?

3 THE WITNESS: I don't think so. I think
4 it's covered under the statute either way. If they
5 sell into the PX by my view of what constitutes a
6 competitive solicitation, that clearly qualifies. If
7 they sell only a portion of the power into the PX,
8 they're going to get rid of the rest of the power some
9 way or other, and those sales are going to be coming
10 about as a result of some kind of discussions or
11 negotiations.

12 MR. STONE: Does the term "put the rate payer
13 at risk" mean adjust their IOU rates, or could it
14 mean by some other concert fees? For example,
15 liability must run contract with the ISO?

16 THE WITNESS: I was puzzling over that question
17 as you asked the petitioner, and again I'm getting
18 a little out of my area here, but I suppose that you
19 could speculate on connections that might be very,
20 very tenuous, but yet possible, on how an adverse
21 financial outcome to U.S. Generating could, in some
22 measure through the results on power prices generally,
23 or on the relative attractiveness of PG&E Corporation
24 stock, or in some other way that might be very, very
25 difficult to trace in connection, nevertheless,
26 theoretically, have some impact on rate payers,

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1 generally, or on rate payers of the PG&E regulating
2 distribution company, but there again, I think those
3 are -- those connections are so tenuous and so
4 speculative that just by virtue of their being
5 speculative almost have to be dismissed.

6 MR. STONE: As Commissioner Laurie said
7 earlier, if this is out of your realm of expertise,
8 say so. That's fine.

9 The costs of reliability must-run contracts spread
10 out to all customers that are part -- that get their
11 power essentially through the ISO. Am I correct?

12 THE WITNESS: That is my understanding. I'm
13 not sure. My further understanding is that they are
14 not spread equally against all ISO -- all customers of
15 the ISO. They still go in relationship to which
16 customers in which area are those for whom regulatory
17 must-run units had to be operated.

18 MR. STONE: The only reason I'm exploring this
19 is because you had made the statement, "This plant
20 versus any other merchant plant would be in the same
21 category as to whether or not it is the result of the
22 existence of the PX," and it seems to me that in this
23 case - this is not the case, but there could be a case
24 where a plant is built specifically to pursue an RMR
25 contract, and those cases would be-would you still be
26 of the opinion that that does not put the rate payer

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1 at risk?

2 THE WITNESS: Yes, that would be my
opinion,

3 and furthermore, I think we need to keep in mind that
4 what we're viewing as the market right now is still in
5 evolution, and is not the market that will be in a few
6 years by the time these projects really come to
7 fruition, and the awarding of regulatory must-run
8 contracts, it is intended with them themselves be a
9 solicitation of some sort.

10 So I think even projects that that are
11 built -- may be built in part or primarily with the
12 objective of obtaining streams through regulatory
13 must-run contracts could still be regarded as assuming
14 things work out the way they are, the way they're
15 intended.

16 COMMISSIONER LAURIE: Anything else from the
17 Committee?

18 Thank you.

19 Mr. Thompson, any further questions of staff
20 at this point?

21 MR. THOMPSON: No, sir.

22 COMMISSIONER LAURIE: I'd like to now call
23 on any member of the public that wishes to offer
24 comment at this time. If you do, please come forward
25 and offer your name for the record, please.

Seeing no further comment from members of
41

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1 the public, I would ask if the petitioner has any
2 closing comment you wish to make at this time?

3 MR. THOMPSON: I don't, but I want to express
4 the appreciation of U.S. Generating Company for
5 the diligence and willingness to take this on and
6 timeliness. This is not the least of the difficult
7 questions that are facing this Committee and the
8 Commission, and we appreciate your efforts.

9 COMMISSIONER LAURIE: Thank you
10 Mr. Thompson.

11 Mr. Mundstock?

12 MR. MUNDSTOCK: I want to thank the
13 Committee.

14 Nothing further from staff.

15 COMMISSIONER LAURIE: Ms. Gefter?

16 HEARING OFFICER GEFTER: Nothing from the
17 Committee at this point.

18 COMMISSIONER LAURIE: Thank you.
19 Commissioner Rohy?

20 COMMISSIONER ROHY: No further comments.

21 COMMISSIONER LAURIE: Let me just offer my apprec-
22 iation for petitioner and staff for your input on
23 this. The committee will submit it for review and
24 comment. It is anticipated that this matter will
25 appear before the Commission as a business meeting of
26 August 12. That is a tentative date.

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1 With that in mind, I wish to thank you, and
2 the meeting stands adjourned.

3 (Thereupon the hearing concluded at 11:00
4 a.m.)

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1 REPORTER'S CERTIFICATE

2 I, Janene R. Biggs, a Certified Shorthand
3 Reporter, hereby certify that the attached proceedings
4 before Chief Hearing Officer Gefter, California Energy
5 Commission,

6

7 In the Matter of:) Docket No.98-SIT-1

8 La Paloma Generating Company, LLC)
9 Petition for Jurisdictional)
10 Determination)
11)

12

13 were held as herein appears and that this is the
14 original transcript thereof and that the statements
15 that appear in this transcript were transcribed by me
16 to the best of my ability.

17 I further certify that this transcript is a
18 true, complete, and accurate record of the proceeding.

19

20

21

22 ←
23 Janene R. Biggs
24 July 22, 1998
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